

EDITORIAL NOTE: After January 1, 1979, “Budget of Expenses and Rate of Assessment” regulations (e.g. sections .200 through .299) and “Handling” regulations (e.g. sections .323 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

#### ASSESSMENT RATE

##### § 923.236 Assessment rate.

On or after April 1, 2004, an assessment rate of \$0.75 per ton is established for the Washington Cherry Marketing Committee.

[69 FR 45236, July 29, 2004]

#### GRADE, SIZE, CONTAINER AND PACK REGULATION

##### § 923.322 Washington cherry handling regulation.

(a) *Grade.* No handler shall handle, except as otherwise provided in this section, any lot of cherries, except cherries of the Rainier, Royal Anne, and similar varieties, commonly referred to as “light sweet cherries” unless such cherries grade at least Washington No. 1 grade except that the following tolerances, by count, of the cherries in the lot shall apply in lieu of the tolerances for defects provided in the Washington State Standards for Grades of Sweet Cherries: *Provided*, That a total of 10 percent for defects including in this amount not more than 5 percent, by count, of the cherries in the lot, for serious damage, and including in this latter amount not more than one percent, by count, of the cherries in the lot, for cherries affected by decay: *Provided further*, That the contents of individual packages in the lot are not limited as to the percentage of defects but the total of the defects of the entire lot shall be within the tolerances specified.

(b) *Size.* No handler shall handle, except as otherwise provided in this section, any lot of cherries unless such cherries meet the following minimum size requirements:

(1) For the Rainier variety and similar varieties commonly referred to as “lightly colored sweet cherries,” at

least 90 percent, by count, of the cherries in any lot shall measure not less than  $\frac{61}{64}$ -inch in diameter and not more than 5 percent, by count, may be less than  $\frac{57}{64}$ -inch in diameter.

(2) For all other varieties, at least 90 percent, by count, of the cherries in any lot shall measure not less than  $\frac{54}{64}$  inch in diameter and not more than 5 percent, by count, may be less than  $\frac{52}{64}$  inch in diameter.

(i) All shipments handled in such containers shall be under the supervision of the committee; and

(ii) At least 90 percent, by count, of the cherries in any lot of such containers shall measure not less than  $\frac{54}{64}$  inch in diameter, and not more than 5 percent, by count, may be less than  $\frac{52}{64}$  inch in diameter.

(c) *Maturity.* No handler shall handle, except as otherwise provided in this section, any lot of Rainier cherries or other varieties of “lightly colored sweet cherries” unless such cherries meet a minimum of 17 percent soluble solids as determined from a composite sample by refractometer prior to packing, at time of packing, or at time of shipment: *Provided*, That individual lots shall not be combined with other lots to meet soluble solids requirements.

(d) *Containers.* No handler shall handle any lot of cherries, except cherries of the Rainier, Royal Anne, and similar varieties commonly referred to as “lightly colored sweet cherries”, unless such cherries are in containers which meet each of the following applicable requirements:

(1) The net weight of loose packed (jumble-filled) cherries in any container shall be 12 pounds or less, or 20 pounds or more. The net weight of face packed cherries in any container shall be 15 pounds, or 12 pounds or less: *Provided*, That containers with a net weight of 12 pounds or less may be packed together with like containers in a master shipping container.

(2) Subject to the provisions of paragraphs (b)(2) (i) and (ii) of this section, shipments of cherries may be handled in such experimental containers as have been approved by the Washington Cherry Marketing Committee.

(e) *Pack.* (1) When containers of cherries are marked with a row count/row

size designation the row count/row size marked shall be one of those shown in Column 1 of the following table and at least 90 percent, by count, of the cherries in any lot shall be not smaller than the corresponding diameter shown in Column 2 of such table: *Provided*, That the content of individual containers in the lot are not limited as to the percentage of undersize; but the total of undersize of the entire lot shall be within the tolerance specified.

TABLE

Column 1, row count/row size	Column 2 diameter (inches)
8 .....	84/64
8½ .....	79/64
9 .....	75/64
9½ .....	71/64
10 .....	67/64
10½ .....	64/64
11 .....	61/64
11½ .....	57/64
12 .....	54/64

(2) When containers of cherries are marked with a minimum diameter, at least 95 percent, by count, of the cherries in any lot and at least 90 percent, by count, of the cherries in any container, shall be not smaller than such minimum diameter.

(f) *Grading or packing cherries outside the production area.* (1) Persons desiring to ship or receive cherries for grading or packing outside the production area shall apply to the committee on a "Shippers/Receivers Application for Special Purpose Shipment Certificate" form, and receive approval from the Committee. The application shall contain the following: (i) Name, address, telephone number, and signature of applicant;

(ii) Certification by the applicant that cherries graded and packed outside the production area shall be inspected by the Federal-State Inspection Service and shall meet the grade, size, maturity, container, and pack requirements of this section prior to shipment; and

(iii) Such other information as the committee may require.

(2) Each approved applicant shall furnish to the committee, at the close of business every Friday, a report containing the following information on a

"Special Purpose Shipment Report" form:

(i) Name, address, telephone number, and signature of applicant;

(ii) Names of growers and handlers of such cherries;

(iii) The total quantity of each variety of cherries; and

(iv) Such other information as the committee may require.

(3) The committee may rescind or deny to any applicant its approval of the "Shippers/Receivers Application for Special Purpose Shipment Certificate" if proof satisfactory to the committee is obtained that any cherries shipped or received by such applicant for grading or packing were handled contrary to the provisions of this section.

(g) *Exceptions.* Any individual shipment of cherries which meets each of the following requirements may be handled without regard to the provisions of paragraphs (a), (b), (c), (d), and (e) of this section, and of §§ 923.41 and 923.55.

(1) The shipment consists of cherries sold for home use and not for resale;

(2) The shipment does not, in the aggregate, exceed 100 pounds, net weight, of cherries; and

(3) Each container is stamped or marked with the words *not for resale* in letters at least one-half inch in height.

(h) *Definitions.* When used herein, *Washington No. 1* and *diameter* shall have the same meaning as when used in the Washington State Standards for Grades of Sweet Cherries (Order 1550 effective April 29, 1978, WAC 16-414-050); *face packed* means that cherries in the top layer in any container are so placed that the stem ends are pointing downward toward the bottom of the container; *row count/row size* means the number of cherries of a uniform size necessary to pack row-faced across a 10½ inch inside width container or comparable number of cherries when packed loose in a container.

[47 FR 31538, July 21, 1982, as amended at 49 FR 27135, July 2, 1984; 51 FR 23040, June 25, 1986; 51 FR 29210, Aug. 15, 1986; 52 FR 20382, June 1, 1987; 58 FR 30698, May 27, 1993; 59 FR 31920, June 21, 1994; 60 FR 66859, Dec. 27, 1995; 64 FR 33743, June 24, 1999; 64 FR 53885, Oct. 5, 1999; 68 FR 15926, Apr. 2, 2003; 70 FR 7001, Feb. 10, 2005; 70 FR 7001, Feb. 10, 2005]